IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1666 OF 2007

Smt.Rekha Surendra Singh
and Ors. ..Petitioners
Vs.
Central Bureau of Investigation
& Anr. ..Respondents

...
Mr.Naveen Chomal Advocate for Petitioners
Mr.P.S.Hingorani APP for Respondent No.2
...

CORAM: R.M.S.KHANDEPARKAR, AND
SMT.V.K.TAHILRAMANI, JJ.
DATE : SEPTEMBER 05, 2007

P.C.:

1. Heard the learned Advocate for the Petitioners. The grievance of the Petitioners is that the learned Magistrate without following the mandate of Section 17 of the Immoral Traffic (Prevention) Act, 1956 ordered to detain all the three daughters of the Petitioners in Children's Welfare Home, Deonar, Mumbai and therefore, the Petitioners are entitled for writ in the nature of *habeas corpus* for release of the said three daughters. The contention on behalf of the Petitioners is that the Magistrate has not followed the procedure prescribed under Section 17 inasmuch as that no enquiry as contemplated under Section 17, has been conducted

by the learned Magistrate directing the girls to be detained in Children's Welfare Home.

2. It is not in dispute that the girls have been remanded to the Children's Welfare Home under order dated 26th April, 2007 passed by the learned Chief Judicial Magistrate, Thane. The order reads thus:

> "Accused Shivnath Pal, Smt.Sharmila & Ms.Rajani are produced at 6.00 p.m. The investigating officer is before court. Heard counsel for State. Perused the case diary. Considering the serious allegations together with the contents of case diary, there is sufficient ground for custodial investigation. The accused Nos. 1 to 3 are therefore, remanded to police custody for further investigation. Due care be taken that the custodial interrogation is done in presence of Lady Police Officer and if as far as possible, in presence of member of NGO. Due care should also be taken to follow the directives of the Hon'ble

Supreme Court regarding custodial investigation. PCE till 30.4.07.

Minor girls and the victims viz. Khusbhu, Ms.Jyoti and Priya be produced before the CWC. The CWC to keep them in safe custody and get their ages verified through Competent Authority at Civil Hospital. On further hearing counsel for the State, CWC is directed to get the victim girls examined through Competent Medical Officer in order to ascertain whether the victim girls are subjected to sexual abuse."

3. Once the person is sent in safe custody in exercise of jurisdiction available under the statutory powers available to an authority issuing such order, the same cannot be said to be in illegal exercise of powers and therefore, it would not warrant interference in exercise of powers under Article 226 of the Constitution of India to issue writ of *habeas corpus.* The law in this regard is well settled. The grievance of the

Petitioners relates to alleged irregularity in the procedure which is required to be followed by the concerned authority before passing such order. That would not result in the impugned order being totally illegal and consequently, the effect of such order cannot be said to be resulting in illegal detention so as to give cause for issuance of writ of *habeas corpus*. Besides, perusal of the order passed by the learned Chief Judicial Magistrate reveals that the girls have been asked to be kept in safe custody at Children's Welfare Home for the purpose of verification which obviously makes it clear that the order has been passed in exercise of powers under Section 17 for the purpose of the said Act. Being so, it is too pre-mature for this Court to hold that the said order is either impermissible or illegal or that there is any cause for issuance of writ of *habeas corpus.*

4. With the above observations, petition is rejected.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]